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City of Hoboken and Mayor Ravinder Singh Bhalla

NATURE'S TOUCH MED NJ, LLC
D/B/A NATURE'S TOUCH,

Plaintiff,

vs.

CITY OF HOBOKEN, RAVINDER
SINGH BHALLA, Individually And As
Mayor Of Hoboken And J. Does 1-5
(Fictitiously Designated Persons),

Defendants,

APPELLATE DIVISION OF THE
SUPERIOR COURT OF NEW
JERSEY

DOCKET NO. A-000722-24 Team 02

Civil Action

APPEAL FROM THE ORDER OF
THE SUPERIOR COURT OF NEW
JERSEY – LAW DIVISION,
HUDSON COUNTY

DOCKET NO. HUD-L-2720-24

Sat Below:

Hon. Jane L. Weiner, J.S.C.

AMENDED

**DEFENDANTS-APPELLANTS' CITY OF HOBOKEN
AND RAVINDER SINGH BHALLA'S
BRIEF ON APPEAL**

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On the Brief

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PRELIMINARY STATEMENT

In early 2022, Plaintiff-Respondent, Nature's Touch Med NJ, LLC (hereinafter "Plaintiff" and/or "Nature's Touch"), submitted its application for a letter of support to operate a medical cannabis dispensary for review by Defendant-Appellant City of Hoboken (the "City")'s Cannabis Review Board (the "Board") which application was heard on January 7, 2022. The Board voted in favor of recommending that the Mayor issue a letter of support, but the Board had no authority to grant a license to operate the dispensary.

On January 10, 2022, Defendant-Appellant Mayor Ravinder Singh Bhalla (the "Mayor") (collectively referred to with the City as the "Defendants-Appellants") rejected the Board's recommendation to issue a letter of support and, thus, no letter of support was executed with respect to Nature's Touch's marijuana dispensary application. Despite being fully aware that the Mayor refused to sign the letter of support, Plaintiff took no further action with respect to its application. For instance, Plaintiff did not file a prerogative writ within forty-five (45) days of learning that no letter of support was being issued by the Mayor. Nor did Plaintiff timely file a Notice of Claim apprising the City of the injury it purportedly suffered as a result of the Mayor's refusal and its undisputed failure to obtain a license to operate a cannabis dispensary in the City.

Indeed, it was not until two (2) years later, that Plaintiff belatedly sought leave to file a late Notice of Claim based upon wildly speculative accusations regarding the Mayor's decision not to issue the letter of support gleaned from a complaint (the "Pellegrini Complaint") filed by Pantaleo Pellegrini ("Pellegrini"). Pellegrini is an aggrieved former employee who voluntarily resigned from his position with the City in lieu of being terminated after it was discovered he engaged in **serious acts of misconduct; to wit: embezzling from the City**, a crime for which he was charged and for which he recently pleaded guilty to having committed.

Yet, by Plaintiff's own admission, as of January 10, 2022, it was aware the Mayor did not issue a letter of support with respect to its application for a license to operate a medical cannabis dispensary in the City, filed with the New Jersey Cannabis Regulatory Commission (the "NJCRC"). Therefore, as of January 10, 2022, Plaintiff knew a license from the NJCRC was not forthcoming.

Consequently, Plaintiff's cause(s) of action against the Defendants-Appellants accrued as of January 10, 2022, and a Notice of Claim ought to have been filed within ninety (90) days therefrom pursuant to N.J.S.A. 59:8-8. Likewise, the maximum one-year limitation to file a late Notice of Claim afforded under N.J.S.A. 59:8-9 also long-expired by the time Plaintiff sought

leave from the Trial Court to file a late Notice of Tort Claim by the filing of a motion dated July 23, 2024.

Despite the foregoing, the lower court erroneously granted Plaintiff's motion for leave to file a Notice of Claim under the flawed rubric that the discovery rule tolled the Plaintiff's time to file by two (2) years due to Plaintiff's discovery of the Mayor's purported reasons for refusing to endorse its application. In accepting Plaintiff's argument, the trial court misapplied the discovery rule since Plaintiff was, indisputably, cognizant, as of January 10, 2022, that the Mayor refused and/or failed to issue the letter of support needed by Plaintiff as part of its application to the State to obtain a license to operate a cannabis dispensary in the City. Thus, Plaintiff's learning of the Mayor's purported reasons for rejecting its application in July 2024, by virtue of the filing of the Pellegrini Complaint, is of no consequence and cannot serve as a basis to invoke the discovery rule. The Mayor is **not** a third party who Plaintiff belatedly learned allegedly caused its injury. Accordingly, the Trial Court should not have granted Plaintiff's request for leave to file a late Notice of Claim but should have recognized Plaintiff was forever barred from commencing suit against Defendants-Appellants.

STATEMENT OF FACTS & PROCEDURAL HISTORY

Plaintiff is a Limited Liability Company incorporated on August 5, 2019, in the State of New Jersey, with a principal place of business located at 10 Orchard Road, Demarest, NJ 07627, and is co-owned by Maria Sausa, Amy Sausa and Jennifer Doherty. (Da18). Plaintiff received a medical dispensary license award in 2019. (Da19). Plaintiff sought to establish a medical marijuana dispensary in the City. *Id.* In 2022, Plaintiff applied for a license to operate a dispensary at 1014 Washington Street in Hoboken, New Jersey. *Id.* Plaintiff was represented by counsel with respect to its application process. (Da70).

On January 7, 2022, the Board reviewed said application and made a favorable recommendation to the administration that it issue Plaintiff a letter of support. (Da26; Da71) However, on January 10, 2022, Plaintiff learned the Mayor rejected its application by refusing to sign such letter of support. (Da17; Da32; Da72) Thereafter, Plaintiff did nothing to challenge the Mayor's decision or file a prerogative writ seeking relief from the court despite that its principals, Maria and Amy Sousa, were "perplexed and absolutely livid to hear of the Mayor's action and even more irrate [sic] when being told that no one knew why the Mayor refused to sign." (Da72, Da79).

Plaintiff contends that in the Spring of 2024, it learned that Pellegrini filed a lawsuit against Appellants. (Da18).

In this regard, on or about May 3, 2024, Pellegrini, a former Director of Health and Human Services, who resigned from his position with the City in lieu of termination on May 3, 2023, filed a Complaint against the City and the Mayor, alleging Wrongful Termination, Conscientious Employee Protection Act (CEPA), N.J.S.A. §34:19; and (ii) Count II, Defamation. See, Pantaleo Pellegrini v. City of Hoboken, Docket No. HUD-L-001720-24 (Trans. ID: LCV20241141314). Mr. Pellegrini subsequently filed an Amended Complaint on May 7, 2024 (Trans. ID: LCV202441158181), and a Second Amended Complaint on May 24, 2024 (Trans. ID: LCV20241334258).¹

In his Complaint (including as amended), Pellegrini alleges that on or about January 14, 2022, at a meeting attended by the Mayor, Pellegrini, and others, the Mayor stated he had received a telephone call from the Mayor of Jersey City, Steven Fulop (“Mayor Fulop”), in which Mayor Fulop allegedly said he as “extremely upset and very angry” that the Board “approved” Plaintiff’s medical cannabis license. (Da18-19). Pellegrini further alleges that at aforesaid meeting, the Mayor advised he was quashing the award to Nature’s

¹ Although not a part of the trial court record, it is respectfully requested that this Court take judicial notice that on or about December 12, 2024, Mr. Pellegrini entered a **plea of guilty** to an Information charging him with **embezzling money from the City of Hoboken** and for filing a false tax return. A copy of Information and the Press Release issued by the United States Attorney’s Office, District of New Jersey are included in the Appendix at Da83 and Da93, respectively.

Touch because Mayor Steven Fulop’s wife, Jacklyn Fulop (“Ms. Fulop”), was going to get the medical cannabis retail location on 14th Street in Hoboken. Id. Pellegrini further alleges in his complaint that the Mayor said he was “quashing” the award to Nature’s Touch because, in exchange, Mayor Fulop promised to give the Mayor’s private law firm contract work. Id. Pellegrini further alleged Ms. Fulop is a co-owner of Story Dispensary of Hoboken, LLC (“Story Dispensary”), and that the Board approved an application for a medical cannabis retail location for Story at a Board meeting held on February 24, 2022. (Da19).

Plaintiff asserts that on May 14, 2024, it served Defendants-Appellants with a Notice of Claim. (Da29-30).

On July 23, 2024, Plaintiff filed a Notice of Motion To File Tort Claims Act Notice (Da12) accompanied by a proposed Order Granting Leave to File Tort Claims Act Notice (Da14), Proof of Service (Da21), Certification of Maria Sausa in Support of Motion to File Tort Claims Act Notice (Da16), and a proposed Verified Complaint (Da23) containing Certifications of Maria Sausa (Da68) and Amy Sausa (Da76). On September 19, 2024, Appellants filed a Letter-Brief in Opposition to aforesaid Motion. On September 23, 2024, Plaintiff filed a Reply Brief.²

² Appellants’ Opposition Brief and Plaintiff’s Reply are omitted from the Appendix pursuant to N.J. Court R. 2:6-1(a)(2).

On September 27, 2024, the Honorable Jane L. Weiner, J.S.C. entered an Order Granting Leave to File Tort Claims Act Notice and written Memorandum of Decision granting Plaintiff's motion and deeming Plaintiff's May 17, 2024 Notice of Claim timely filed. (Da8-11). The instant appeal subsequently ensued. (Da1).

LEGAL ARGUMENT

THE LOWER COURT ERRED BY APPLYING THE DISCOVERY RULE AND GRANTING PLAINTIFF'S MOTION TO FILE A LATE NOTICE OF CLAIM

(Addressed by the Lower Court at Da10-11)

A. The Tort Claims Act Requires A Tort Claim Notice Be Filed With A Public Entity NO Later Than One Year From The Accrual Of The Claim.

The Tort Claims Act ("TCA"), N.J.S.A. 59:1-1, et. seq., "provides 'broad but not absolute immunity for all public entities,'" Jones v. Morey's Pier, Inc., 230 N.J. 142, 154 (2017) (quoting Marcinczyk v. N.J. Police Training Comm'n, 203 N.J. 586, 597 (2020)), and its "'guiding principle' is 'that immunity from tort liability is the general rule and liability is the exception,'" O'Donnell v. N.J. Tpk. Auth., 236 N.J. 335, 345 (2019) (quoting D.D. v. Univ. of Med. & Dentistry of N.J., 213 N.J. 130, 134 (2013)).

The TCA defines the circumstances when a plaintiff may bring tort claims against public entities (see D.D., 213 N.J. at 133-34), and it "establishes the

procedure by which claims may be brought.” Rogers v. Cape May Cnty. Off. Of Publ. Def., 208 N.J. 414, 420 (2011) (quoting Beauchamp v. Amedio, 164 N.J. 111, 116 (2000)). The TCA requires a plaintiff asserting tort claims against a public entity or employee serve the entity or employee with a notice of the claim within ninety (90) days of the accrual of the claim. N.J.S.A. 59:8-8. See also, O’Donnell, 236 N.J. at 345.

The TCA’s requirements are “strictly construed.” McDade v. Siazon, 208 N.J. 463, 474 (2011) (quoting Gerber ex rel. Gerber v. Springfield Bd. of Educ., 328 N.J. Super. 24, 34 (App. Div. 2000)). A plaintiff who fails to timely serve a notice of tort claim “shall be forever barred from recovering against a public entity.” N.J.S.A. 59:8-8. The harshness of N.J.S.A. 59:8-8’s ninety (90) day requirement, however, is alleviated by N.J.S.A. 59:8-9 (Rogers, 208 N.J. at 420-21), which “permits a court to allow a plaintiff to file a later notice of claim under ‘extraordinary circumstances,’ if the **motion is made within one year of the accrual of the claim.**” Id. at 427 (emphasis added) (quoting Lowe v. Zarghami, 158 N.J. 606, 613 (1999)); see also, O’Donnell, 236 N.J. at 345-46.

“After the one-year limitation has passed, the court is without authority to relieve a plaintiff from his [or her] failure to have filed a notice of claim, and a consequent action at law must fail.” Pilonero v. Twp. of Old Bridge, 236 N.J. Super. 529, 532 (App. Div. 1989) (emphasis added) (quoting

Speer v. Armstrong, 168 N.J. Super. 251, 255 (App. Div. 1979)). See also, J.P. v. Smith, 444 N.J. Super. 507, 529 (App. Div. 2016) (holding a claimant was “absolute[ly] bar[red]” from recovering against a public entity because the claimant did not file a tort claim notice within ninety (90) days from the claim’s accrual and did not move for leave to file a late notice of claim within the one-year limitation period).

Accordingly, a “sequential analysis” is required to determine whether a notice of claim is timely filed under N.J.S.A. 59:8-8. Beauchamp, supra, 164 N.J. at 118. “The first task is always to determine when the claim accrued.” Id. After the date of accrual is ascertained, the Court must “determine whether a notice of claim was filed within ninety days.” Id. When a notice of claim is not filed within ninety days, the Court must determine if the claimant demonstrates “extraordinary circumstances justifying a late notice” under N.J.S.A. 59:8-9. Id. at 1128-19. However, as set forth hereinabove, if a claim was not filed within one (1) year from the date of accrual, the Court is **without authority** to allow the filing of a late notice of claim. Pilonero v. Twp. of Old Bridge, 236 N.J. Super. at 532 (emphasis added).

A court’s finding of the accrual date of a claim is essential because it provides the benchmark for the commencement of the ninety-day period during which the claimant must timely file a notice of claim against a public entity or

employee. N.J.S.A. 59:8-8 (requiring the filing of a notice of claim within ninety days of the accrual date of the claim). The accrual date also provides the start-date for the one-year period within which a late notice of claim may be filed, and the two-year period within which suit against the public entity or employee may be filed. N.J.S.A. 59:8-9 (providing claimants who fail to file a timely notice of claim within the ninety days required under N.J.S.A. 59:8-8 may be “permitted to file such notice . . . within one year after the accrual of [the] claim,” and stating “in no event may any suit against a public entity . . . [or] employee arising under [the TCA] be filed later than two years from the time of the accrual of the claim”).

Although N.J.S.A. 59:8-1 does not define the date of accrual in any significant way, the comment to that section states that “[i]t is intended that the term accrual of a cause of action shall be defined in accordance with existing law in the private sector.” *Id.* at 116, citing, Harry A. Margolis & Robert Novack, Claims Against Public Entities, 1972 Task Force Comment to N.J.S.A. 59:8-1, (Gann 2000). As such, our Supreme Court has found that “[a] claim accrues on the date of the accident or incident that gives rise to any injury, however, slight, that would be actionable if inflicted by a private citizen.” *Id.*

Accordingly, a cause of action ordinarily accrues “when any wrongful act or omission resulting in any injury, however slight, for which the law provides

a remedy, occurs.” Id. at 116 (citations omitted). The New Jersey Supreme Court further recognizes the private sector law “holds that a claim accrues on the date on which the underlying tortious act occurred,” but that the “same common law allows for delay of the legally cognizable date of accrual when the victim is unaware of his [or her] injury or does not know that a third party is [liable] for the injury.” See, Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 134 (2017); see also, Beauchamp, 164 N.J. at 118-119. Thus, the Court has applied the discovery rule to determine the date of accrual of a claim under the TCA (Id.) and held the accrual date for a claim under the TCA “is tolled from the date of the tortious act or injury when the injured party either **does not know of his injury or does not know that a third party is responsible for the injury.**” Id. (citing McDade, 208 N.J. at 475) (emphasis added); see also, Beauchamp, 164 N.J. at 117-119 (same). Discovery does not require knowledge of a legal injury or awareness of all the evidence that will ultimately be relied upon. See Freeman v. State, 347 N.J. Super. 11, 22, 788 A.2d 867 (App. Div. 2002) (citing Baker v. Bd. of Regents, 991 F.2d 628, 632 (10th Cir. 1993)) (holding that an action under 42 U.S.C. §1983 accrues when a plaintiff knows or has reason to know of the injury which is the basis of his action, and ignorance of legal rights does not toll the statute of limitations).

**B. Plaintiff's Cause(s) of Action Against The Defendants-Appellants
Accrued in January 2022 And Are Time-Barred.**

Plaintiff alleges, in pertinent part, that as a direct and proximate cause of the actions of the Mayor, acting in the capacity of Mayor of the City, it was deprived of the award of the medical retail cannabis license as approved by the Board at a public hearing and, thus, deprived of operating its business at 1014 Washington Street for a lease term of no less than ten years with a five year option. Plaintiff further alleges it was deprived of all income from the operation of said business resulting in damages of lost profits, lost income, lost earnings, attorney's fees, costs and other financial damages which can be quantified. Da34-35 at ¶¶ 99-104.

However, the Board never "approved" the award of the medical retail cannabis license to Plaintiff, as alleged. The Board, which serves as an "advisory committee to the City of Hoboken" (Hoboken Municipal Code at § 36-1), merely reviewed Plaintiff's application and provided its endorsement pursuant to § 36-4A of the Hoboken Municipal Code which simply authorizes the Board to review all applications for cannabis wholesaler, cannabis retailer, medical cannabis dispensary and Hoboken-based cannabis delivery. Thereafter, the Mayor rejected the Board's endorsement and refused to execute a letter of support with respect to Plaintiff's application. See, Da17 at ¶ 9, Da27 at ¶ 34 and Da32 at ¶82.

As such, as alleged in Plaintiff's Complaint, Plaintiff has been aware since January 10, 2022, that: (i) the Board voted to endorse its application for a cannabis license; (ii) the Mayor did **not** issue a letter of support with respect to Plaintiff's application despite the Board's endorsement; (iii) counsel for the Board was unable to provide an explanation as to why the Mayor refused to write a letter of support; (iv) its application for a license to operate a marijuana dispensary was never put before the City Council (or any other City governing body) for approval and, as such, there was no resolution regarding same; and (v) without the Mayor's letter of approval, the NJCRC would not issue Plaintiff a license to operate a medical cannabis dispensary license.

Plaintiff was further wholly aware, as of January 10, 2022, that: (1) it suffered an injury; to wit: the lost opportunity to operate a marijuana dispensary in the City; and (2) such lost opportunity was caused by the Mayor due to his refusal to sign a letter of support with respect to its application for a cannabis dispensary license, despite the Board's endorsement, and for which refusal no explanation was provided. Thus, it is undisputable that Plaintiff's cause(s) of action against Defendants-Appellants accrued as of January 10, 2022, and Plaintiff's time to file a Notice of Claim expired as of April 2, 2022. The Trial Court, therefore, was without authority to relieve Plaintiff of the express requirements set forth under the TCA and erred in accepting Plaintiff's Notice

of Claim as timely filed, despite that same was filed on May 14, 2024, well over two (2) years from the date of accrual of its claim(s), by invoking the discovery rule as no third party, formerly unknown to Plaintiff, allegedly caused their injury.

C. The Lower Court Erred In Relying Upon *Beauchamp v. Amedio*.

The Trial Court further erred in relying upon *Beauchamp*, *supra*, in determining “the discovery rule applies and justifies the filing of a late claim” for which the lower court did not provide a proper explanation of its reasoning. (Da11)³ In so holding, the Trial Court merely noted “Plaintiff alleges that they had no knowledge of why their application was denied until Mr. Pellegrini’s complaint was filed” and “it was unaware until the Spring of 2024 that there may have been unlawful reasons for the [Mayor’s] denial.” (Da10). Yet, even if true, this presumed lack of knowledge of the Mayor’s “motive” does not justify application of the discovery rule and allowing Plaintiff to file its Notice of Claim beyond two (2) years from the accrual of its action since the Mayor was not an unknown “third party” who allegedly caused its injury.

³ The discovery rule is utilized to establish the date upon which a claim accrued, not to justify the filing of a “late” notice of claim. Thus, the lower court appeared to be conflating the discovery rule with the standards to be applied in considering whether “extraordinary circumstances” exist to justify the filing of a late claim.

Plaintiff's assertion that it only learned of the Mayor's purported motive for rejecting its application upon its review of the Pellegrini Complaint is entirely of no consequence in determining when this action accrued, and by extension, when a Notice of Claim was required to be filed pursuant to the TCA. Firstly, the Defendants-Appellants firmly deny the allegations made by Pellegrini which are nothing more than the wild accusations of a disgruntled former employee of the City who is publicly seeking revenge against the Mayor for, purportedly, forcing him to resign from his employ with the City. Indeed, since filing his Complaint, Pellegrini pled guilty in the United States District Court, District of New Jersey, for embezzling money from the City and filing false tax returns. Secondly, and more importantly, discovery of a purported motive is not a factor in determining when a cause of action accrues, particularly where, as here, a clearly identifiable action (or inaction) purportedly causing plaintiff's injury was perpetrated by an identifiable, non-third party, on a date certain which was known to plaintiff.

For example, by way of analogy, in matters in which a plaintiff is alleging he/she was subject to a discriminatory or retaliatory employment action such as termination or denial of promotion arising under the Law Against Discrimination, N.J.S.A. 10:5-1 et. seq. (the "LAD"), a plaintiff's cause of action typically accrues on the date the employee is subjected to such discrete

adverse action. See, e.g. Roa v. Roa, 200 N.J. 555, 561, 985 A.2d 1225 (2008) (plaintiff's wrongful termination claim pursuant to the LAD matter accrued on the date of plaintiff's termination, not on the date he discovered a post-discharge act of retaliation); see also, Kaminski v. Twp. of Toms River, 2013 U.S. Dist. LEXIS 199835 at * 29 (Da96, Da106), (District Court found plaintiff's failure to promote claim accrued when the promotion list was promulgated to all personnel, and plaintiff's discovery that he was deceived about the underlying motive behind his lack of promotion was irrelevant for the purposes of the discovery rule); but see, Henry v. New Jersey Dept. of Human Services, 204 N.J. 320, 9 A.3d 882 (2010) (holding that while there was no equitable basis to extend the statute of limitations on plaintiff's retaliation claim, which accrued on the date she resigned after being told that if she had not complained, she may have been reclassified [for higher pay], a hearing was required to determine whether the discovery rule applied to a discrimination claim because plaintiff may have had no reasonable suspicion she was discriminated against based upon misleading information and reasons provided to her about not being reclassified.)

The lower court's reliance upon Beauchamp was unwarranted as Beauchamp did **not** involve a situation wherein the date upon which a Notice of Claim was required to be filed was tolled because of the late discovery of the

alleged *motive* of the public actor responsible for plaintiff's injury. Rather, the issue before the Beauchamp Court was whether plaintiff's cause of action accrued on the date of the subject accident or when plaintiff learned her resulting injury was permanent. Notably, the Court in Beauchamp held plaintiff's cause of action *accrued* on the date of her accident, NOT when she learned of the permanency of her injury. However, because of "confusion" on the issue at the time, the Court held extraordinary circumstances warranted the filing of a *late* notice of claim against a third party.⁴

In the present matter, Plaintiff knew as of January 10, 2022, that the Mayor refused to sign the letter of support and, as a result, it would not be issued a license to operate a medical marijuana dispensary in the City. While Plaintiff may not have known of the Mayor's motivation, like Beauchamp, Plaintiff knew an injury had occurred and who was responsible for that injury. No unknown, potentially liable third party existed. Consequently, Plaintiff's cause(s) of action against Appellants-Defendants accrued as of January 10, 2022, when the Mayor refused to give a letter of support, and not in May of 2024, when Plaintiff learned of Pellegrini's allegations regarding the Mayor's purported "motives" for refusing same.

⁴Unlike the situation presented here, plaintiff in Beauchamp, sought leave to file her notice of claim within one (1) year from the date in which her action accrued - the date of the accident.

D. Reliance On Ben Elazar v. Macrietta Cleaners, Inc. Is Also Misplaced.

In its Motion for Leave to File a Notice of Claim, Plaintiff cited to Ben Elazar v. Macrietta Cleaners, Inc., *supra*, 230 N.J. 123, for the proposition that leave should be granted because it only learned the Defendants-Appellants caused it injury by virtue of the Pellegrini Complaint, filed in May 2024. However, Ben Elazar is wholly distinguishable and does not support tolling the time in which Plaintiff was required to file its Notice of Claim. Accordingly, Ben Elazar is neither relevant nor binding with respect to this appeal.

In Ben Elazar, after experiencing health issues for many years, plaintiffs learned that Cranford Township was partially responsible, in addition to the initially named private party defendants, for the toxic contamination to their property causing their health problems. The New Jersey Supreme Court held that, for purposes of summary judgment, the plaintiffs' claim against the township accrued when they learned that some of the contaminants had been stored on township land. The Court reasoned that "... the [information received by plaintiffs in] 2011 do[es] not demonstrate that plaintiffs either knew or should have known that a [third party] public defendant might have been responsible for their injuries, triggering the exceedingly short time granted for presentation of the notice of claim required by the Tort Claims Act." Id. at 141.

Here, Plaintiff was well aware as of January 10, 2022, that: (i) the Mayor refused to issue a letter of support; (ii) the City had not adopted a resolution endorsing Plaintiff's application; (iii) the NJCRC would not issue it a license to operate a medical marijuana dispensary without support from the Mayor and/or City; and (iv) Plaintiff would not reap the economic benefits from operating a medical marijuana dispensary in the City as the result of it not being issued the requisite license.

Accordingly, unlike Ben Elazar, Plaintiff knew (or had reason to know) the Mayor, a non-third party public defendant, was responsible for its purported injuries as it knew the Mayor (and by extension, the City) was responsible for it not obtaining a letter of support in connection with its application for a cannabis license. Plaintiff also knew that, as a result of the Mayor's refusal to support its application, it would not be issued a license to dispense cannabis and would not reap the benefit of and the prospective economic rewards attendant with operating a cannabis dispensary. Thus, when Plaintiff first learned of the Mayor's purported and contested motive for refusing to support Plaintiff's application, is of no moment and does (and cannot) serve as a basis to invoke the discovery rule because the Mayor is not an unknown third party. Therefore, the ninety-day period for presentation of the notice of claim was sufficiently

triggered in January 2022 and the Trial Court erred in granting Plaintiff's Motion for Leave to File a Notice of Claim based upon the discovery rule.

CONCLUSION

For the foregoing reasons, the lower court's decision granting Plaintiff leave to file a Notice of Claim should be vacated, and Plaintiff's action should be dismissed with prejudice due to its failure to comply with the notice provisions of the Tort Claims Act.

Respectfully submitted,

/s/ Daniel Antonelli
Daniel Antonelli

Dated: January 22, 2025

Superior Court of New Jersey

Appellate Division

Docket No. A-000722-24 Team 02

NATURE'S TOUCH MED NJ, LLC	:	
D/B/A NATURE'S TOUCH,	:	CIVIL ACTION
	:	
<i>Plaintiff-Respondent,</i>	:	ON APPEAL FROM THE
	:	ORDER OF THE
vs.	:	SUPERIOR COURT
	:	OF NEW JERSEY,
	:	LAW DIVISION,
	:	HUDSON COUNTY
CITY OF HOBOKEN, RAVINDER	:	
SINGH BHALLA, Individually And	:	
As Mayor Of Hoboken And J. Does	:	DOCKET NO. HUD-L-2720-24
1-5 (Fictitiously Designated	:	
Persons),	:	Sat Below:
	:	
<i>Defendants-Appellants.</i>	:	HON. JANE L. WEINER, J.S.C.
	:	

BRIEF ON BEHALF ON PLAINTIFF-RESPONDENT

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Date Submitted: February 20, 2025



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PRELIMINARY STATEMENT REBUTTAL

On or about, January 10, 2022, Mayor Ravinder Singh Bhalla (hereinafter “Mayor Bhalla”) fails to issue a letter (supporting or rejecting) a license approved by the board in favor an application by Nature’s Touch Med NJ, LLC d/b/a Nature’s Touch (hereinafter “Nature’s Touch”). Nature’s Touch counsel made an inquiry into as to the non-action. The record is clear that the counsel overseeing the application for Hoboken, Ronald Mondello, Esq., had no information regarding the mayor’s inaction.

The recognized standard and ordinary course of action in any municipality is for the mayor to issue a letter providing the reason/rationale for (as is in this case) not issuing a letter in support. The record is void of any standard by which an applicant can compel a mayor to issue a basis for the same. Absent a letter specifying the reasons for the board’s rejection it is impossible for this (or any Plaintiff) to ascertain the reason the board approval was not furthered.

There is no procedure known to the Plaintiff-Respondent for filing a prerogative writ and/or Notice of Claim based upon the application approval. There is no reference in the Title 59 statute, local ordinance or case law provided shifting a burden upon a Plaintiff to find a violation supporting a Title 59 violation. The fact remains, this cause of action is tied to Mayor Bhalla engaging in a quid pro quo with other parties in his personal favor as outlined in the

Pellegrini complaint and affidavit. There is ample evidence to support this fact in documents filed with the court under penalties of perjury as well as actions of board members calling for an investigation. Mayor Bhalla could have provided any reason within his authority to reject the application, but he simply did nothing. Therefore, absent a factual basis giving rise to this claim in 2022, it is impossible for the Plaintiff-Respondent to have a reason to file a Notice of Claim on the time schedule argued by the Defendants-Appellants.

The Defendants-Appellants repeatedly suggest the late Notice of Claim is based upon “wildly speculative accusations.” The Defendants-Appellants have not provided evidence to counter or refute the claims presented by the Plaintiff-Respondent. The record is void of any affidavits, certifications or any evidence which contradicts or refutes the whistle blower statements and allegations. Pantaleo Pellegrini made sworn statements affirming the acts creating the Plaintiff-Respondent’s basis for the Notice of Claim. The record is void of any statement(s) by any party refuting the facts alleged. The majority of documents provided after the filing of this action have been redacted.

The Defendants-Appellants rely upon and asserts in this summary action, ad hominem attack of the whistle blower attempting to impugn his character. The judicial process favors character and credibility questions to be assessed by a trier of fact. The Defendants-Appellants will have an ample opportunity to

question the truthfulness of Mr. Pellegrini's statements based upon other acts in discovery. The Defendants-Appellants' only defense is their counsel, asserting the statements are false without offering any counter statement. The case law in the argument below provides a legal basis that favors allowing complaints to proceed, giving the allegations the benefit of the doubt.

The Notice of Claim cannot begin to accrue by Mayor Bhalla's failure to issue a statement as to the approval of the board's decision. Defendants-Appellants argue that Mayor Bhalla's failure to act alone gives rise to the need to file a Notice of Claim. The record is void of facts, statute or legal precedent to support this position (see redacted response). Claims arise upon malfeasance by a party with knowledge of the malfeasance by the victim or at least publicly available information. It is not enough that an act takes place if the act is concealed from all parties and not readily available to parties affected by the actions. The case law provided below will show the Defendants-Appellants' assertion that the Pellegrini complaint is of "no consequence" and "cannot serve as a basis to invoke the discovery rule" is a trial question for the finder of fact. Title 59 statute is clear, there must be a known act/action which gives rise to a cause of action. The Plaintiff-Respondent, like any Plaintiff filing a Title 59 claim, has an obligation to provide a basis upon which to file a claim which creates a violation.

STATEMENT OF FACTS & PROCEDURAL HISTORY¹

The Defendants-Appellants admit and acknowledge in its statement of facts and procedural history the Plaintiff-Respondent could have never known the reasons for Mayor Bhalla's actions or inactions. (App. Br.² at p. 4). They clearly state in their brief, "no one knew why the Mayor refused to sign." (App. Br. at p. 4; Da³72, Da79). Yet, the Defendants-Appellants will still have the court believe the Plaintiff-Respondent should have taken legal action at that time. (App. Br. at p. 4). The Defendants-Appellants are simultaneously proposing a Notice of Claim should have been filed absent a known cause, arguing this Notice of Claim is late because it was not filed in a timely manner regardless of the lack of legal basis or cause, while simultaneously arguing it must be dismissed because the cause presented is 'simply not true' because counsel for the Defendants-Appellants says so. (App. Br. at pp. 11-17). Basically, they argue, this case lacks merit under any circumstance but should have been filed two years ago anyway without said merit. Hopefully the circular confusing argument is as difficult to understand as it is for the undersigned to attempt to restate.

¹ The factual background and procedural history of the matter are intertwined and therefore presented together.

² "App. Br." refers to the Defendants-Appellants' Brief.

³ "Da" refers to the Plaintiff-Respondent's Appendix.

The Plaintiff-Respondent could not file a Notice of Claim or take any legal action without a factual basis to assert a violation of rights. (Da17, Da19, Da29-30, Da72). The frivolous litigation rules would be actionable against the Plaintiff-Respondent under those circumstances. (Da29-30). Mayor Bhalla had the right, with good cause, to reject the issuance of the license in question. The Plaintiff-Respondent has no indication as to why Mayor Bhalla took no action. The review board did not know the reason and neither did the review board attorney. (Da29). These facts are completely undisputed and unquestioned. Period full stop. The filing of a Notice of Claim or taking any legal action at that moment would have been a fishing expedition. (Da20). The documents provided after a Freedom of Information Act request are predominantly redacted.

The facts which became known in May 2024 subjects every one of the listed defendants to not only civil damages but potentially many other actions, including a review by the bar association as to the attorney license suspensions or disbarment. (Da33). The odds of Mayor Bhalla providing the reasons he did not issue a reason for not supporting the issuance of the license being the same as stated by Pellegrini are less than zero. (Pa⁴1-20). Therefore, the Plaintiff-Respondent would have been given some other non-actionable reason to file

⁴“Pa” refers to the Plaintiff-Respondent’s Appendix.

only to become aware of the Pellegrini allegations later and leave the parties in the same exact place we find ourselves at this moment. (Da20).

The claim that Mr. Pellegrini filed a false tax return somehow negates his whistle blower statement is immaterial and completely misplaced for the purposes of the application before this court. (App. Br. at pp. 5, 15). The Defendants-Appellants have failed to offer a counter certification, affidavit or any statement from Mayor Singh, Mayor Fulop or Jacklyn Thompson contradicting or refuting the allegations. In fact, the record is void of a single shred of evidence suggesting the statements of Mr. Pellegrini and his allegations are false. The Defendants-Appellants are unable to state in their brief that the events described by Mr. Pellegrini did not happen. The Defendants-Appellants are not even able to offer a statement suggesting the allegations are inaccurate. The only attack upon Mr. Pellegrini's information is that he plead guilty to filing a false tax return and that fact negates any statement he may make about anything being truthful. (App. Br. at pp. 5, 15). This is the only defense to the allegations made by the Plaintiff-Respondent's complaint. (Pa21-27; Da23-67).

The court should also consider the other facts in support of the allegations against the Defendants-Appellants in this case. The Pellegrini affidavit and complaint does not exist on its own un-vetted. (Pa1-20). TAPinto Hoboken reported on the Pellegrini affidavit and found enough merit to issue an article

and public report on May 17, 2024. (Pa35-39). The article reports, “Four Hoboken City Council members are calling on the New Jersey Attorney General’s Office and the FBI to probe allegations of criminality made by former Health and Human Services Director Leo Pellegrini in a lawsuit that came to light last week.” (Pa35-39). The referenced council members held a press conference outside of Hoboken Borough Hall and made a public call to the attorney general and the federal authorities to investigate the allegations against Hoboken Mayor Ravi Bhalla and potentially other Hoboken elected officials and government officials as well. (Pa35-39). Therefore, while counsel for the Defendants-Appellants downplay and outright dismiss the Pellegrini allegations, four council members found the statements to have enough merit to warrant an investigation. (Pa35-39). Furthermore, Council Member Fisher, who fought against the opening of Story Dispensary in her ward, stated the allegations of Mayor Bhalla doing political favors for Jersey City Mayor Steven Fulop (his wife co-owns the dispensary building) have been referred to the AG’s Office by the New Jersey Cannabis Regulatory Commission. (Pa35-39).

These facts and independent voices would seem to quash the Defendants-Appellants’ position regarding the potential truthfulness of the allegations. (Pa35-39). The lack of transparency in response to a FOIA request further gives reason to question the validity of any defenses asserted in this summary

proceeding. Furthermore, case law always favors allowing matters to proceed on their face and not be summarily dismissed as the legal argument below herein outlines.

LEGAL ARGUMENT

Point A. A NOTICE OF CLAIM IS TRIGGERED BY A KNOWN EVENT OF NEGLIGENCE OR MALFEASANCE AS OPPOSED TO A PREDICTION.

a. Tort Claims Act and Title 59.

The Defendants-Appellants correctly assert that there is a ninety-day window to file a Notice of Claim upon the accrual of the same. (App. Br. at pp. 2, 8-10, 19-20). There is no need to discuss the filing of a late notice of claim with leave of the court within one year as the same is not applicable under these facts and circumstances. Therefore, the first prong is the rise and existence of an act which violates a claimant's rights under Title 59. A claimant must have knowledge or basis to assert an illegal, immoral and/or corrupt act. A claimant cannot speculate as to the potential of a violation against a government entity as the same goes against the entire principle of governmental immunity against ordinary negligence.

The case law as to the accrual date is clear, unequivocal and defined as "...toll[ed] from the date the tortious act or injury when the injured party either does not know of his injury or does not know that a third party is responsible for

the injury.” Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 134 (2017).

The case law is clear, the claimant must have knowledge of the act creating the injury. Period, full stop.

The undisputed facts and events which give rise to the injury to the Plaintiff-Respondent are outlined in the complaint filed in the Superior Court of New Jersey Hudson County Vicinage and include the following (Plaintiff’s Complaint):

30. The City of Hoboken Cannabis Review Board unanimously approved the application by Nature’s Touch.

32. On January 8, 2022, the award to Nature’s Touch was reported in the local news, to wit, the Hudson County Review.

34. On or about January 10, 2022, City of Hoboken Mayor Ravinder Singh Bhalla (hereinafter also “Mayor Bhalla”) refused to sign the letter of approval for Nature’s Touch marijuana dispensary license.

35. On or about January 14, 2022, during a lunch meeting with Mayor Bhalla, Vijay Chaudhuri (Mayor Bhalla’s Chief of Staff), Councilman Jason Freeman, John Allen, Esq. (Corporate Counsel), Pantaleo Pellegrini, Mayor Bhalla said that he received a phone call from Mayor Fulop of Jersey City and that Mayor Fulop was extremely upset and very angry that the Cannabis Board awarded to Nature’s Touch the license at said Washington Street location.

36. The statement made in paragraph thirty five above is part of a certification made by Pantaleo Pellegrini who has filed suit against the City of Hoboken, has whistle blower status and will be called to affirm the certified statement during discovery and at the time of trial.

37. At the meeting referred to in paragraph thirty five above, Mayor Bhalla said he was quashing the award to Nature’s Touch because Mayor

Fulop's wife was going to get the medicinal cannabis retail location on 14th Street in Hoboken.

38. The statement made in paragraph thirty seven above is part of a certification made by Pantaleo Pellegrini who has filed suit against the City of Hoboken, has whistle blower status and will be called to affirm the certified statement during discovery and at the time of trial.

39. Mayor Bhalla reiterated at the January 14, 2022 lunch meeting referenced in paragraphs thirty five and thirty seven above herein, that he was going to quash the award to Nature's Touch and explained that in exchange, Mayor Fulop promised Mayor Bhalla that he would give Mayor Bhalla's law firm contract work.

40. The statement made in paragraph thirty nine five above is part of a certification made by Pantaleo Pellegrini who has filed suit against the City of Hoboken, has whistle blower status and will be called to affirm the certified statement during discovery and at the time of trial.

41. At all relevant times mentioned herein, "Mayor Fulop" is Steven M. Fulop, the Mayor of Jersey City, New Jersey.

42. At all relevant times mentioned herein, Steven M. Fulop is/was married to Jacklyn Thompson.

43. At all relevant times mentioned herein, Jacklyn Thompson, is a co-owner of Story Dispensary of Hoboken, LLC, which submitted an application to operate a cannabis retail operation in Hoboken, New Jersey.

44. On or about February 24, 2022, there was a meeting of the Cannabis Review Board to vote on Jacklyn Thompson's application for the cannabis medicinal retail location on 14th Street in the City of Hoboken.

46. The day prior to the meeting, Mayor Bhalla told Pantaleo Pellegrini that he (the Mayor) needed the Cannabis Board to approve Mayor Fulop's wife's application.

47. The statement made in paragraph forty six above is part of a certification made by Pantaleo Pellegrini who has filed suit against the

City of Hoboken, has whistle blower status and will be called to affirm the certified statement during discovery and at the time of trial.

48. In June of 2022, Mayor Bhalla made sure to fast track an expansion of a Cannabis license granted to Joseph Castiello to include recreational use.

49. The statement made in paragraph forty eight above is part of a certification made by Pantaleo Pellegrini who has filed suit against the City of Hoboken, has whistle blower status and will be called to affirm the certified statement during discovery and at the time of trial.

50. Mayor Bhalla forwarded three other applications to the Cannabis Review Board for approval which were not approved thanks to Pantaleo Pellegrini.

51. The statement made in paragraph fifty above is part of a certification made by Pantaleo Pellegrini who has filed suit against the City of Hoboken, has whistle blower status and will be called to affirm the certified statement during discovery and at the time of trial.

52. At all relevant times mentioned herein, Ronald P. Mondello, Esq., is/was the Cannabis Control Board for the City of Hoboken, who advised the Plaintiffs he would offer assistance to Nature's Touch to find out why Mayor Bhalla quashed the license.

52. At all relevant times mentioned herein, Ronald P. Mondello, Esq., is/was the Cannabis Control Board for the City of Jersey City.

53. It is presumed without facts to the contrary, Mr. Mondello was unable to get the answer due to the covert nature of Mayor Bhalla's actions.

54. The statement made in paragraph fifty three above is part of a certification made by Pantaleo Pellegrini who has filed suit against the City of Hoboken, has whistle blower status and will be called to affirm the certified statement during discovery and at the time of trial.

55. There was no plausible way for Nature's Touch to know why their application was quashed at the time the same occurred in January of 2022.

56. There was no plausible way for Nature's Touch to know their application was subject to the unethical and illegal actions of Mayor Bhalla and the tortuous interference actions by Steven M. Fulop and Jacklyn Thompson prior to the filing of the complaint by Pantaleo Pellegrini.

58. Immediately upon discovery the actions referenced above herein, the City of Hoboken and Ravinder Bhalla were placed on Title 59 Notice of Intent to Make Claim by certified mail return receipt dated May 14, 2024.

59. The return receipt proof of mailing were signed for by the City of Hoboken Clerk for both the City of Hoboken and Mayor Bhalla on May 17, 2024.

(Da26-30).

The only statement, evidence or facts asserted to contradict the allegations stated above from the Plaintiff's complaint consists of the Defendants-Appellants' counsel alleging they are a "wild fabrication" and that the source, to wit Pantaleo Pellegrini, filed a false tax return, so the statements must be false. (App. Br. at pp. 5, 15). Not a single certification by either accused Mayor or Jacklyn Thompson.

Under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 to 12-3, a claimant against a public entity must file notice "within 90 days of accrual of the claim" N.J.S.A. 59:8-8(a). "Service of the notice required by [N.J.S.A. 59:8-1 to -11] upon the public entity shall constitute constructive service upon any

employee of that entity." N.J.S.A. 59:8-10. The proper service aspect is moot in the matter before this court.

N.J.S.A. 59:8-9 provides:

A claimant who fails to file notice of his claim within 90 days as provided in [N.J.S.A. 59:8-8], may, in the discretion of a judge of the Superior Court, be permitted to file such notice at any time within one year after the accrual of his claim provided that the public entity . . . has not been substantially prejudiced thereby. Application to the court for permission to file a late notice of claim shall be made upon motion ¹ supported by affidavits based upon personal knowledge of the affiant showing sufficient reasons constituting extraordinary circumstances for his failure to file notice of claim within the period of time prescribed

The question is whether and when exceptions to these deadlines apply.

"The Legislature imposed two standards for the grant of permission to file a late notice of claim: first, that there be a showing of 'sufficient reasons constituting extraordinary circumstances' for the claimant's failure to timely file, and second, that the public entity not be 'substantially prejudiced' thereby." McDade, 208 N.J. at 477 (quoting N.J.S.A. 59:8-9).

"What constitutes 'extraordinary circumstances' is inherently imprecise and must be determined on a case-by-case basis. Jeffrey v. State, 468 N.J. Super. 52, 58 (App. Div. 2021). "In determining whether extraordinary circumstances exist, 'a judge must consider the collective impact of the circumstances offered as reasons for the delay.'" Mendez v. So. Jersey Transp. Auth., 416 N.J. Super. 525,

¹ Cf. McDade v. Siazon, 208 N.J. 463, 479 (2011), where the claimant 'amended' the claim notice instead of moving for relief: "Plaintiffs' decision to forego the filing of a motion for leave to file a late notice of claim under N.J.S.A. 59:8-9 deprived the trial court of the opportunity to apply the legal standard prescribed by the Legislature"

533 (App. Div. 2010) (R.L. v. State-Operated School Dist., 387 N.J. Super. 331, 341 (App. Div. 2006)). "A key factor in determining whether a plaintiff acted with diligence in pursuing his or her claim is the promptness in contacting and retaining counsel to pursue plaintiff's rights." Ibid. (delay justified because of counsel's need to review videotape proving city ambulance's involvement in accident). "[A]ny doubts' as to whether extraordinary circumstances exist 'should be resolved in favor of the application.'" O'Donnell v. N.J. Turnpike Auth., 236 N.J. 335, 344 (2019) (quoting Lowe v. Zarghami, 158 N.J. 606, 629 (1999)) (citation omitted). On appeal, a grant of leave will be viewed more favorably than a denial of leave, "to the end that wherever possible cases may be heard on their merits...." Ibid. (quoting Lowe, 158 N.J. at 629) (citation omitted).

Importantly, "the ninety-day period within which the injured party must file a notice of claim against a public entity is . . . delayed until the injured party learns of the injury or of the third party's responsibility for that injury." Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 135 (2017). In Ben Elazar, plaintiffs, who owned property in Cranford Township, began experiencing health problems in the 1990s. In 2011, plaintiffs learned that their property had been contaminated with chemicals from a dry cleaning business next door. In 2012, plaintiffs sued private entities, alleging that their health problems were caused by the contamination. Plaintiffs then received information that, back in 1946, the Township of Cranford stored some of the dry cleaning business's chemicals on its own nearby property. Plaintiffs served a notice of claim on Cranford and, one year later, amended their complaint to join the Township.

The lower courts held that the Township was entitled to summary judgment because plaintiffs knew they had a contamination claim in 2011, a year before they filed the TCA notice. Reversing, the Supreme Court held that, for purposes of summary judgment, the plaintiffs' claim against Cranford accrued when they learned that some of the contaminants had been stored on Township land.

In sum, we are convinced on this record, as it exists thus far, that the [information received in] 2011 do[es] not demonstrate that plaintiffs either knew or should have known that a public defendant might have been responsible for their injuries, triggering the exceedingly short time granted for presentation of the notice of claim required by the Tort Claims Act. Id. at 141.

The Ben Elazar Court approvingly cited Lopez v. Swyer, 62 N.J. 267 (1973). Maria Lopez received radiation therapy from Dr. Swyer in 1962. She immediately suffered radiation burns and necrotic ulcers, and she subsequently developed fibrosis of the lung. In 1967, while in the hospital, Ms. Lopez overheard a physician say about her: "And there you see, gentlemen, what happens when the radiologist puts a patient on the table and goes out and has a cup of coffee."

In remanding for a bench trial as to when Lopez discovered her cause of action against Swyer:

the Court note[d] that the ignorance of which we speak may be of more than one kind. A person may, for instance, be unaware that he has sustained injury until after the statute of limitations has run In other cases damage may be all too apparent, but the injured party may not know that it is attributable to the fault or neglect of another. The plaintiffs' claim in this suit falls within the latter category.

Id. at 274.

Nature's Touch did not receive a license in 2022, but the company did not have any reason to believe the decision was actionable. "The power to grant licenses connotes the power of denial for good cause, in keeping with and to subserve the declared legislative ends. The test is whether there has been a reasonable, bona fide exercise of the discretion granted by the legislative authority, as distinguished from arbitrary action." See Librizzi v. Plunkett, 126 N.J.L. 17, 23 (Sup. Ct. 1940). In the context of cannabis licensing, "[m]unicipal actions enjoy a presumption of validity." Big Smoke, LLC v. Twp. of W. Milford, 478 N.J. Super. 203, 217 (App. Div. 2024). A party attacking municipal action has the burden of proving the invalidity of same. N.Y. SMSA Ltd. P'ship v. Bd. of Adjustment of Twp. of Bernards, 324 N.J. Super. 149, 163 (App. Div. 1999) (citations omitted). It was not until the disclosure of Pantaleo Pellegrini's civil complaint that Nature's Touch learned how Ravinder Singh Bhalla allegedly sabotaged the application for his personal gain. (Pa1-20; Da79-80). Until that moment, the Plaintiff-Respondent had to presume there was a valid

reason. The Tort Claims Act notice was issued immediately upon the knowledge the reason was invalid. Similarly, under Ben Elazar and Lopez, the TCA notice was filed well within 90 days after the claim was known to have accrued.

As for the second McDaid prong, the public entity bears "the burdens of production and persuasion on the question of prejudice." Mendez, 416 N.J. Super. at 535. "The fact of delay alone does not give rise to the assumption of prejudice; the public entity must present a factual basis for the claim of substantial prejudice." Id. at 535-36. "Substantial prejudice in this context means substantial prejudice in maintaining one's defense,' such as 'the loss of witnesses, the loss of evidence, fading memories, and the like.'" Id. at 535 (quoting Blank v. City of Elizabeth, 318 N.J. Super. 106, 114-15 (App. Div.), aff'd as modified, 162 N.J. 150 (1999)). "Substantial prejudice must be shown by 'specificity and not by general allegation" Id. at 536 (quoting Blank, 318 N.J. Super. at 115). The City of Hoboken and Mr. Bhalla were initially placed on notice of their alleged illegal actions when they were served Pellegrini's lawsuit. (Pa1-Pa20). The Plaintiff-Respondent's Title 59 Notice was filed nearly immediately thereafter. (Da29-30). The allegations are facts based on party statements. The statements will either be corroborated or not. There is no prejudice against the named Defendants in this matter under any possible legal sense.

Importantly, the viability of Nature's Touch's claims is not at issue; the sole question is whether leave to file the claim is appropriate. The City and Mr. Bhalla had six months to investigate, as per N.J.S.A. 59:8-8. The vast majority of information provided by the City of Hoboken is redacted. Even if the Plaintiff-Respondent made a request in January of 2022 the records provided are nearly entirely redacted and void of any information providing a basis to file a claim. Defendants-Appellants have since, through their counsel, filed motions to dismiss the actions and the current appeal. They have not, to the best of the Plaintiff's knowledge, engaged in any discovery or investigation of the claims. Title 59 statute permits the filing of the complaint after six months. The Plaintiff has since filed and served all parties and the State of New Jersey Superior Court Hudson County Vicinage has acknowledged the same.

b. Emphasis on Late Notice of Claim.

The Defendants-Appellants argue the Notice of Claim filed as well as the complaint are out of time. "The first task is always to determine when the claim accrued" Beauchamp v. Amedio, 164 N.J. 116 (2000). The Plaintiff-Respondent established above that the claim accrued when the covert actions which created the injury were known in May of 2024. (Pa21-27; Da23-67).

The Defendants-Appellants admit in their brief the filing of the claim is all about the "accrual date." (App. Br. at pp. 7-11). The Defendants-Appellants

also admit that N.J.S.A. 59:8-1 does not define the date of accrual in any significant way. (App. Br. at p. 10). Counsel for Defendants-Appellants could not be more correct. The filing of the Pellegrini complaint is the event which brought the claim to life or as is stated in case law, “Incident that gives rise to an injury.” Harry A. Margolis & Robert Novack, Claims Against Public Entities, 1972 Task Force Comment to N.J.S.A. 59:8-1 (Gann 2000).

The Defendants-Appellants provide the Plaintiff-Respondent with all the legal argument needed when they cite the language in Ben Alazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 134 (2017); “same common law allows for delay of the legally cognizable date of accrual when the victim is unaware of his [or her] injury or does not know that a third party is [liable] for the injury.” Interestingly, the Defendants-Appellants provide no factual analysis whatsoever to defend their position that the Plaintiff-Respondent’s actions are inconsistent with case holdings and established legal principles. (App. Br. at pp. 18-20).

Please accept the following analysis on behalf of the Plaintiff-Respondent. The facts are quite simple, straight forward and unquestioned. Nature’s Touch proposal was favorably received by the Review Board which voted in its favor on January 7, 2022. (Da17, Da26, Da32, Da45, Da71, Da79). The Mayor, Ravindeer Singh Bhalla, rejected the application, within his **legal** authority thereafter. (Da17, Da27, Da32, Da37, Da42, Da45, Da52). Mayor Bhalla fails

to submit a letter of support stating the **legal reason** for the rejection. (Da20, Da72-73, Da80). It has been established above herein that the rejection itself without knowing the reason is not actionable. However, in the event the rejection was revealed to be based on a fraudulent act or illegitimate reason, the claim arises at that time. The successful concealment of said factual basis makes knowledge of a claim and ability to act impossible. The Plaintiff could not possibly take any action if the fraudulent or illegitimate reason is concealed as doing so under those circumstances would have necessarily involved conjecture and speculation. Essentially the Defendants-Appellants expect the Plaintiff-Respondent to know what is hidden and unknown. The request for information pursuant to a FOIA request was met with nearly all redacted documents. Even when the facts are known they argue the facts are merely “wild speculation.” Therefore, the Defendants-Appellants argue there is no way to sustain this claim regardless of our timing or facts. They simply wish for the matter to be dismissed and disappeared.

On May 7, 2024, one of the Review Board members filed the civil action captioned Pantaleo Pellegrini v. City of Hoboken, HUD-L-1720-24. According to the complaint:

16. In January 2022, there was a meeting of Hoboken's Cannabis Review Board ("Cannabis Board"), which consisted of Plaintiff, Councilman Michael Russo, and Freeman.

17. At said meeting, the Cannabis Board decided to award a cannabis medicinal retail location in the City of Hoboken, on Washington Street between 10th and 11th Street, to a certain applicant, Nature's Touch Med NJ, LLC ("Nature's Touch").

18. On or about January 8, 2022, the award to Nature's Touch was reported in the local news, the Hudson County View.

19. On or about January 14, 2022, during a lunch meeting with Mayor Bhalla, Chaudhuri, Freeman, John Allen, Esq., Corporation Counsel ("Allen"), and Plaintiff, Mayor Bhalla said that he received a telephone call from Mayor Fulop of Jersey City and that Mayor Fulop was extremely upset and very angry that the Cannabis Board awarded to Nature's Touch said location. Mayor Bhalla said that he was quashing the award to Nature's Touch because Mayor Fulop's wife was going to get the medicinal cannabis retail location on 14th Street in Hoboken.

20. Upon hearing this, Plaintiff told Mayor Bhalla and all the others present that it was wrong to quash the award to Nature's Touch because it met all the State's requirements, including the social justice criteria.

21. Mayor Bhalla reiterated that he was going to quash the award to Nature's Touch and explained that in exchange, Mayor Fulop promised Mayor Bhalla that he would give Mayor Bhalla's law firm contract work. Mayor Bhalla did in fact quash the award to Nature's Touch.

22. Mayor Fulop is Steven M. Fulop, the Mayor of Jersey City, New Jersey. Mr. Fulop's wife is Jacklyn Fulop.

23. Jacklyn Fulop is a co-owner of Story Dispensal}' of Hoboken, LLC, which had submitted an application to operate a cannabis retail operation in Hoboken, New Jersey.

24. On or about February 24, 2022, there was a meeting of the Cannabis Board to vote on Mayor Fulop's wife's application for the cannabis medicinal retail location on 14th Street in the City of Hoboken.

* * * *

32. On or about June 23, 2022, Plaintiff met with Mayor Bhalla, Chaudhuri, Joseph Castiello, Brendail Gill, and Alixon Collazos.

33. Mr. Castiello had been approved for a medicinal cannabis retail location and wanted to expand it to include also recreational use.

34. Brandon Gill, a friend of Mr. Castiello, was a lobbyist who provided funding to Mayor Bhalla's political campaign.

35. Just prior to the meeting with Mr. Castiello, Mr. Gill, and Ms. Collazos, Chaudhuri, in Plaintiffs presence, told Mayor Bhalla to make sure to tell Mr. Gill the City is fast-tracking the approval of Mr. Castiello's expansion application because of Mr. Gill's relationship with Mr. Castiello, to get something from Mr. Gill in return, such as political finance contributions.

36. Plaintiff immediately told Mayor Bhalla and Chaudhuri that this was wrong and that they should not do it.

37. Disregarding Plaintiffs objections and warning, Mayor Bhalla, at the meeting with Mr. Castiello, Mr. Gill, Ms. Collazos, Chaudhuri, and Plaintiff, stated that Mr. Castiello's expansion application was going to be approved and would be fast-tracked.

38. The approval of Mr. Castiello's application was in fact fast-tracked and approved.

(Pa4-6)

Nature's Touch could not know the actual reason why its application was denied until reviewing Mr. Pellegrini's May 7, 2024 complaint. (Pa1-20). Let's assume the Defendants-Appellants are correct in asserting the claim should have been filed within six months of the rejection in 2022. The Plaintiff-Respondent would have asserted their rights were being violated without any proof of wrongdoing. The Plaintiff-Respondent did not know who Pantaleo Pelligrini

was at the time and certainly did not know what information he had about the covert dealings between the Defendants. The Plaintiff-Respondent's claim would have failed, lacking a basis to sustain a cause of action. The only way the Plaintiff-Respondent could act on this claim is by knowing the information in possession of Pantaleo Pelligrini's mind. The information became public and known on May 7, 2024. (Pa1-20). Therefore, the claim accrues on May 7, 2024. The Notice of Claim is not only filed within the one-year period for late notice but is filed well within the ninety day period.

Point II. THE DEFENDANTS-APPELLANTS COMPLETELY MISSTATE FACTS IN AN ATTEMPT TO CREATE A NON-EXISTING NARRATIVE TO MEET THEIR DISMISSAL CLAIM NEEDS.

The Defendants-Appellants argue and state that the board never approved the application and award for the Plaintiff-Respondent's cannabis license. This is false. The board unanimously approved the license and the Mayor's failure to approve the same left the board attorney, Ronald Mondello, Esq., baffled. Mayor Bhalla had the final say as to approval and rejection. The Mayor rejected the board's recommendation for approval without issuing a letter as to the reason leaving the Plaintiff-Respondent in the dark. The moment the reason became known the Plaintiff-Respondent took immediate action.

The Defendants-Appellants keep saying the Mayor did not issue a letter of support. (App. Br. at pp. 1, 2, 3, 4, 12, 17, 19). The statement is true but

should be expanded to include the fact that Mayor Bhalla took absolutely no action at all. Mayor Bhalla gave no reason or indication as to why and the council board members and attorney did not know why or what happened. If the board members which voted to approve and counsel for the board did not know why the license was not approved, how could the Plaintiff-Respondent be expected to have the answer? The people that had the answer were the Defendants and luckily for the Plaintiff-Respondent, Mr. Pellegrini, who finally chose to act.

The Defendants-Appellants' analysis is unbelievably and inexplicably flawed. It is almost difficult to understand how the simplicity of the facts is being evaded. Nature's Touch could not know why its application was denied until reviewing Mr. Pellegrini's May 7 complaint. (Pa1-20). Therefore, the claim accrues on May 7, 2024. The Notice of Claim is not only filed within the one-year period for late notice but is filed well within the ninety-day period.

The Defendants-Appellants' brief will have this Court believe that so long as the time in which to file a claim expires a claimant is out of time and out of luck. Such an approach would actually create an environment in which municipalities and government entities could operate under a plan to "cover up" all wrongdoing long enough to create immunity for itself. The public and claimants would then be forever in the dark as to the malfeasance and ill actions

of government entities which can simply cover the truth until a conveniently immune time. Interestingly, the Defendants-Appellants' brief concedes this very fact in section "B" of the brief where it states:

"Thus, the Court has applied the discovery rule to determine the date of accrual of a claim under the TCA (Id.) and held that the accrual date for a claim under the TCA "is tolled from the date of the tortious act or injury when the injured party either **does not know of his injury or does not know** that a third party is responsible for the injury."

(App. Br. at p. 11 citing McDade, 208 N.J. at 475); see also, Beauchamp, 164 N.J. at 122."

The circumstances here are extreme. The whistle-blower complaint outlines the Mayor's intent (and that of the City of Hoboken as respondeat superior for his actions and other named Defendants) to benefit himself and his co-conspirator defendants, Jersey City Mayor Steven Fulop and his wife Jacklyn Thompson. (Pa1-20). The Defendants' actions were specific and calculated. At the very least they deserve to be investigated through further discovery and not dismissed based on an assertion of the City's legal representatives calling them "wildly speculative." The allegations cited in the Pantaleo Pellegrini v. City of Hoboken are affirmed under penalties of perjury. (Pa1-20).

Point III. THE LOWER COURT'S ANALYSIS IS CORRECT IN EVERY ASPECT AND SHOULD BE AFFIRMED

The analysis of the lower court decision only amplifies the Defendants-Appellants' absurd willful ignorance of the facts of this case. (Da10-11). The

lower court judge's analysis is incredibly clear, concise and based on law. (Da10-11). Very simply, there was no knowledge as to the actual unlawful, immoral, corrupt act and motive which unquestionably tolls the Title 59 Notice requirement. The fact the Defendants-Appellants' claim there is no consequence ignores the entire basis of the claim.

The Plaintiff-Respondent's claims are not "baseless" until proven to be such. The Defendants-Appellants want to assert a legal conclusion without an investigation, discovery or trial. If this happened in every case, every defendant would be successful on motions to dismiss. The analogy of a discrimination complaint is offensive to anyone who has ever been subject to discrimination. The Defendants-Appellants are suggesting that a person subject to discrimination who is part of a marginalized group is the same as every other defendant (or at minimum this Plaintiff-Respondent). (App. Br. at pp. 15-16). A person whose background has a history of being discriminated against is not the same as a person making a submission of a license where a board has approved and a Mayor fails to act in any capacity without even a hint of reason known by the attorney for the board. Second, this Mayor did not act in a discriminatory manner, he acted in a selfishly motivated matter as part of a collusion with other parties for financial motivation.

Defendants-Appellants' brief cites a case which makes a specific and unequivocal reference to the reason why the individual did not receive a raise Henry v. New Jersey Dept. of Human Services, 204 N.J. 320, 9 A.3d 882 (2010). (App. Br. at p. 16). The Defendants-Appellants' attempts at reaching to find an analogous case is desperate at best.

On a motion to dismiss, the court must, "...accept the pleader's factual allegations as true and give the pleader the benefit of all reasonable inferences." Woodmont Properties, *supra*, 470 N.J. Super. 540 (citing Printing Mart, *supra*, 116 N.J. at 746; Seidenberg v. Summit Bank, 348 N.J. 243, 249-50 (App. Div. 2002)). In Fact, such motions are granted, "only in the rarest of instances." See Printing Mart, 116 N.J. at 772.

The Plaintiff restates its original position herein:

Nature's Touch did not receive a license in 2022, but the company did **not have any reason to believe the decision was actionable**. How and why would the Plaintiff assume the actions by the Mayor involved any malfeasance? "The power to grant licenses connotes the power of denial for good cause" Librizzi v. Plunkett, 126 N.J.L. 17, 23 (Sup. Ct. 1940). In the context of cannabis licensing, "[m]unicipal actions enjoy a presumption of validity." Big Smoke, LLC v. Twp. of W. Milford, 478 N.J. Super. 203, 217 (App. Div. 2024).

The facts, until disputed by the Mayor (and all other names Defendants), must be viewed in favor of the Plaintiffs as asserted in the complaint, otherwise every complaint could be summarily dismissed. The facts here assert in no

uncertain terms, Mayor Ravinder Singh Bhalla sabotaged the application for personal gain. (Da17-20, Da23-67, Da68-75, Da76-82). The co-defendants, Steven Fulop and Jacklyn Thompson, husband and wife, acted in concert with Mayor Bhalla in their own personal financial interests. (Da17-20, Da23-67, Da68-75, Da76-82). The allegations are not “wildly speculative” but instead are part of another legal action against said Mayor Bhalla and an investigation initiated by other Hoboken council members.

The Plaintiff-Respondent reasserts the second prong of McDaid as if set at length herein. There is no substantial prejudice or any prejudice by any purported delay in the filing of Plaintiff’s Notice of Claim or Complaint. The City of Hoboken, specifically Mayor Bhalla, was made aware of the claims asserted by Mr. Pellegrini’s lawsuit in May 2024. (Pa1-20; Da18). At the very least, the City of Hoboken and its Mayor, has had far more notice or knowledge of Mr. Pellegrini’s potential claims through direct involvement with him than this Plaintiff-Respondent could have ever had with the hidden and covert actions.

CONCLUSION

The Plaintiff-Respondent did not and could not have known the “why.” It is the “why” that gives life to the claim. When the “why” is known, the Plaintiff-Respondent was quick and timely in filing the Title 59 Notice. A Judge of the

Superior Court determined the same in a summary manner because it is that clear and apparent. Any attempt by the Defendants-Appellants to muddy the waters is ridiculous. Plaintiff-Respondent requests the decision of the Superior Court be affirmed for all the reasons set forth herein.

Dated: February 20, 2025

/s/ Vince A. Sicari

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NATURE'S TOUCH MED NJ, LLC
D/B/A NATURE'S TOUCH,

Plaintiff,

vs.

CITY OF HOBOKEN, RAVINDER
SINGH BHALLA, Individually And As
Mayor Of Hoboken And J. Does 1-5
(Fictitiously Designated Persons),

Defendants,

APPELLATE DIVISION OF THE
SUPERIOR COURT OF NEW
JERSEY

DOCKET NO. A-000722-24 Team 02

Civil Action

APPEAL FROM THE ORDER OF
THE SUPERIOR COURT OF NEW
JERSEY – LAW DIVISION,
HUDSON COUNTY

DOCKET NO. HUD-L-2720-24

Sat Below:

Hon. Jane L. Weiner, J.S.C.

**REPLY BRIEF ON BEHALF OF
DEFENDANTS-APPELLANTS' CITY OF HOBOKEN
AND RAVINDER SINGH BHALLA**

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On the Brief

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PRELIMINARY STATEMENT

Plaintiff, Nature's Touch Med NJ, LLC ("Plaintiff"), repeatedly demonstrates and concedes that, in January 2022, it had adequate information to warrant filing the requisite Notice of Claim pertaining to its alleged cause of action against City Defendants, City of Hoboken (the "City") and Mayor Ravinder Singh Bhalla (the "Mayor") (collectively, the "City Defendants"). To that end, Plaintiff admits to knowing, as of January 10, 2022, that the Mayor did not issue a letter of support with respect to Plaintiff's application for a cannabis license, despite the City of Hoboken Cannabis Board's (the "Board") support of same. Despite Plaintiff's desperate attempt to conflate knowing the reason for the Mayor's failure to issue a letter of support as triggering the date of injury, as necessary before for filing a Notice of Claim and Complaint, the trial court correctly recognized the date of the injury was January 10, 2022.

Thus, as of January 10, 2022, Plaintiff knew: (a) it suffered an injury; to wit: the economic loss from not operating a cannabis dispensary in the City; (b) that the Mayor, and by extension the City, was responsible for the purported injury; and (c) that no explanation or justification for the Mayor withholding his support for Plaintiff's application was ever provided. Therefore, Plaintiff was required to file a Notice of Tort Claim within ninety (90) days from the date of

accrual of its action; to wit: January 10, 2022, and Plaintiff's failure to do so cannot be excused.

Plaintiff's efforts to sidestep these unavoidable facts fail in their entirety. For instance, Plaintiff purports that "Notice of Claim cannot begin to accrue Mayor Bhalla's failure to issue a statement as to the approval of the board's decision"; that claims arise "upon malfeasance by a party with knowledge of the malfeasance by the victim or at least publicly available information." (Pb 3).¹ However, these arguments pertain to what proof or lack of proof a plaintiff may have to establish liability, not whether a plaintiff has sufficient knowledge with respect to the existence and/or accrual of a claim.

Plaintiff also argues that Defendants have not yet offered "affidavits, certifications or any evidence which contradicts or refutes the whistle-blower statements and claims [of Pantaleo Pellegrini]." (Pb 2). However, this is a complete red herring. While Defendants wholly deny Plaintiff's assertions as to any wrongdoing, which are entirely based upon the unsupported, incredible claims of Pantaleo Pellegrini, a former employee of City of Hoboken who plead guilty to embezzling a substantial sum of money from the City of Hoboken, the veracity of such assertions are not at issue before this Court.

¹ "PB" refers to Plaintiff's Brief in Opposition to this Appeal.

The only issue on appeal is whether the Trial Court erred in determining the discovery rule tolled the time to file a Notice of Claim when Plaintiff knew, as of January 2022, that it suffered an injury and who was purportedly responsible for such injury. Defendants respectfully submit the answer to this narrow issue is yes.

The indisputable record below establishes that, as of January 10, 2022, Plaintiff knew the Mayor refused to issue a letter supporting its application despite the Board's approval, and, as a direct result, a license from the State of New Jersey to operate a cannabis dispensary in the City would not be issued. Thus, Plaintiff knew as of January 2022 of its purported economic injury.

Plaintiff's brief is completely devoid and overlooks the requirement that a third party has caused an injury. There is no third party here. It is undisputed that Plaintiff knew in January 2022 the Mayor (and by extension the City), not some unknown third party, was potentially responsible for its injury. Accordingly, the Trial Court erred in granting Plaintiff's request for leave to file a late Notice of Claim and failing to forever bar Plaintiff from commencing suit against Defendant.

LEGAL ARGUMENT

PLAINTIFF MISCONSTRUES WHEN A CAUSE OF ACTION ACCRUES UNDER THE LAW OF THIS STATE

Plaintiff misconstrues and misstates the circumstances under which a claim accrues, thereby triggering the requirement that a claimant file a Notice of Tort Claim within ninety (90) days pursuant to N.J.S.A. 59:8-8.

In this regard, Plaintiff inaccurately states “[a] claimant must have knowledge or basis to assert an illegal, immoral and/or corrupt act.” (Pb 8). However, it is well established that when applying the discovery rule, the proper inquiry is “whether the facts presented would alert a reasonable person, exercising ordinary diligence, that he or she was **injured due to the fault of another.**” McDade v. Siazon, 208 N.J. 463, 475, 32 A.3d 1122 (2011) (quoting Caravaggio v. D'Agostini, 166 N.J. 237, 240, 765 A.2d 182 (2001)). Thus, and as wholly conceded by Plaintiff, (Pb 8-9), the discovery rule tolls the accrual of a claim when “the injured party **either does not know of his injury or does not know that a third party is responsible for the injury.**” Ben Elazar v. Macrietta Cleaners, Inc. 230 N.J. 123, 134 (2017).

Here the Trial Court was correct and it is without dispute that as of January 10, 2022, Plaintiff knew it suffered an injury; to wit: the loss of the opportunity to obtain a cannabis license from the State of New Jersey. It is further without dispute that as of the same date, Plaintiff knew the Mayor, not some third-party,

was responsible for its alleged injury by virtue of his refusing to provide a letter of support for Plaintiff's application despite the Board's presumed support thereof. Thus, Plaintiff's cause of action accrued on January 10, 2022, and a notice of claim ought to have been filed within 90 days of such accrual.

While Plaintiff references, at length, numerous allegations set forth in its Complaint and, inexplicably, argues the Defendants fail to present any "statement, evidence or facts . . . to contradict the allegations" (Pb 12), such "argument" is totally irrelevant and nothing more than a meaningless distraction.

As Plaintiff knows (or should know), the ONLY issue before this Court is whether the Trial Court erred in finding Plaintiff timely filed its Notice of Tort Claim on May of 2024, over two YEARS after: (a) Plaintiff was purportedly injured; (b) Plaintiff became aware of its purported injury; and (c) Plaintiff became aware of the party/parties responsible for the purported injury. Defendants respectfully submit the Court did, indeed, err in rendering such determination based upon the relevant and binding law of this State.

A. Plaintiff's Reliance On *Ben Elazar v. Macrietta Cleaners Inc.* and *Lopez v. Sywer* is Misplaced.

As more fully set forth in Defendants' moving Brief (see, DB 18)², Plaintiff's reliance on Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 134

² "DB" refers to Defendants' initial Appeal Brief.

(2017) is misplaced. In this regard, in Ben Elazar, and wholly distinct from the scenario presently before the Court, the plaintiff did not know or have reason to know that some of the contaminants that may have caused plaintiff's injuries were stored on township land. Thus, plaintiff had no reason to suspect, at the time the complaint was filed, that an unknown third party (the public defendant) might have been responsible for his injuries. Therefore, the discovery rule applied and the time to file a notice of claim was deemed tolled.

In contrast, here, Plaintiff knew of its injury and knew the Mayor, not some unknown third party public defendant, was responsible for not supporting its application to the State. Accordingly, and since the Mayor was not an unknown third party, the reasoning set forth in Ben Elazar for applying the discovery rule is simply inapplicable in this instance..

Likewise, Plaintiff's reliance on Lopez v. Swyer, 62 N.J. 267 (1973) is inapposite. In Lopez, the Supreme Court did **not** conclude the discovery rule *in fact* applied to toll plaintiff's claims against her former radiologist, Dr. Swyer, which were brought five (5) years after plaintiff stopped treating with Dr. Swyer. The Supreme Court merely held that "whenever a plaintiff claims a right to relief from the bar of the statute of limitations by virtue of the so-called 'discovery' rule, the question as to whether such relief is properly available shall be deemed an issue for determination by the court rather than by the jury." Id. at 272.

Further, in Lopez, there was record evidence establishing that, not only was Dr. Swyer the radiologist who gave plaintiff the “calamitous” radiation causing her injuries, but other treaters had reassured plaintiff her symptoms were NOT due to negligence abut merely something that “just happens.” See, Lopez v. Swyer, 115 N.J. Super. 237, 245 (App Div. 1962). Accordingly, the Supreme Court remanded the matter to the trial court to determine when plaintiff first discovered she may have a claim against Dr. Swyer, based upon what she heard while she was in the hospital, a proceeding now commonly referred to as a “Lopez Hearing.”

Unlike Lopez, where other medical providers presumably led plaintiff to believe her injuries were NOT the result of negligence, Plaintiff here knew: (a) of its purported injury, (b) who caused its purported injury, and (c) that no justification or excuse was provided to explain the purported injury. Indisputably, Plaintiff had sufficient information in January 2022 to know it had or may have a claim against the Mayor and the City, both of whom are non-third parties. Plaintiff was, thus, required to file a Notice of Claim within ninety (90) days of the accrual of such claim. See, N.J.S.A. 59:8-8.

B. Plaintiff Cannot Show It Lacked Sufficient Knowledge About Having An Actionable Claim Against Defendants.

Plaintiff admits it did not receive a cannabis license in 2022 but argues the company “did not have any reason to believe the decision was actionable.”

(Pb 16). Instead, Plaintiff argues that until it received the Pellegrini Complaint, Plaintiff was constrained to “presume there was a valid reason [for the Mayor to issue a letter of support].” (Pb 16).

Yet, Plaintiff also acknowledges knowing the Board expressed approval of its application and that the Mayor rejected its application despite such Board approval, which Plaintiff recognizes was within the Mayor’s legal authority. Plaintiff also admits the Mayor failed to submit a letter “stating the legal reason for the rejection” (Pb 20) and Robert Mondello, Esq., an attorney “overseeing the application for Hoboken”, offered no information regarding the Mayor’s inaction. (Pb 1). As such, even though Plaintiff may not have been in possession of evidence to “prove” a claim against the City Defendants, Plaintiff had sufficient reason to recognize a potential claim may exist.

Indeed, the purpose requiring the filing of a Notice of Claim is to allow the public entity to review and investigate a claim, afford it the opportunity to settle the claim, allow it to correct the conditions or practices that gave rise to the claim, and give it advance notice of its potential liability. Velez v. City of Jersey City, 180 N.J. 284, 290, 850 A.2d 1238 (2004).

Here, Plaintiff argues that even if it filed a Notice of Claim within ninety (90) days from the Mayor’s refusal to issue the letter of support, such claim would have failed as Plaintiff had no proof of wrongdoing (Pb22). However,

the requirement to file a Notice of Claim does not hinge on whether a plaintiff can prove its claim at the time the Notice of Claim is filed. Rather, a plaintiff must file a Notice of Claim when it knew, or had reason to know, a claim exists or may exist against a public entity and/or employee.

Further, the requirement to file a Notice of Claim in or about January 2022, allows the public entity to conduct an investigation into the claim, preserve evidence, interview witnesses and make a preliminary assessment as to the merits of the claim. In so doing, Pellegrini would likely have had far less leeway to cast his wild and false aspersions which were only asserted **after** it was discovered by independent, outside counsel that Pellegrini committed serious acts of misconduct by embezzling from the City – a crime as to which Pellegrini has pleaded guilty -- and which resulted in Pellegrini's resignation. Plaintiff also, in all likelihood, would have recognized the falsity and incredibility of Pellegrini's allegations before commencing its lawsuit. As such, Plaintiff's reliance upon this Court's decision in Big Smoke LLC v. Tp. of West Milford, 478 N.J. Super. 203 (2024), is wrong. (Pb 16, 27).

Firstly, in Big Smoke, there is no discussion as to the filing of a Notice of Claim or invoking the discovery rule. Secondly, the facts in Big Smoke and the Court's holding therein do nothing to advance or address the date and accrual of injury or that a third party caused plaintiff's injury. Big Smoke simply

addresses whether failure to place a resolution of support on the council agenda was a “de facto” denial.

Here too, the failure by the Mayor to issue a letter of support was a “de facto” denial upon which the Trial Court correctly held constituted the date of injury. Big Smoke, however, does not stand for the proposition that Plaintiff needed a rationale for the Mayor’s refusal to issue a letter of support since the plaintiff in Big Smoke timely filed its Prerogative Writ, and did not need to invoke the discovery rule in order to file a Notice of Claim. Plaintiff, first before the Trial Court and now before this Court, is unable demonstrate it did not know the date of injury as it has conceded same in its Complaint and in the record developed below. Accordingly, Plaintiff’s claim accrued in January 2022, and the discovery rule does not apply to toll Plaintiff’s time to file a Notice of Claim since the Mayor is and was not an unknown third party defendant who may have caused its injury.

CONCLUSION

For the foregoing reasons, as well as for the reasons set forth in Defendants’ initial Brief, the Trial Court’s decision granting Plaintiff leave to file a Notice of Claim and deeming Plaintiff’s Notice of Claim as timely filed should be vacated. Further, Plaintiff’s action should be dismissed with prejudice due to its failure to comply with the notice provisions of the Tort Claims Act.

Respectfully submitted,

/s/ Daniel Antonelli
Daniel Antonelli

Dated: March 7, 2025